

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **August 10, 2004**

AGENDA ITEM NO.: 14

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Amend Chapter 7, Article III, Impoundment, of the *Lynchburg City Code* Regarding Impoundment of Animals at the Lynchburg Humane Society**

RECOMMENDATION:

City Council amend the *City Code* to increase fees charged for the impoundment of animals at the Lynchburg Humane Society and align this section of the *Code* with the Agreement and Lease between the Humane Society and the City and with actual practices.

SUMMARY:

The Lynchburg Humane Society requests that Council consider increasing reclamation fees from \$15 for the first day of impoundment to \$17.50; and increase fees for each succeeding day of impoundment from \$5.00 to \$7.50 (Chapter 7, Article III, Section 7-79). Actual costs are in excess of \$8 per day. Most kennels charge in excess of \$10 per day. The Humane Society is hopeful that the increased fee will be an incentive to owners to get to the shelter to pick up their animal more quickly rather than "waiting for the weekend" or "waiting until they come back from vacation" as they sometimes do now.

The Humane Society asks that Section 7-81 be deleted as this is not consistent with current practice. Current practice at the Humane Society is that a custodian or person who has found a dog must meet adoption requirements and pay the appropriate fees.

In addition, and consistent with the Agreement and Lease that the City has with the Humane Society, "all reclamation fees shall be retained by the Society to be applied toward the cost of operating the shelter." The Lease and Agreement also states that "The Society will retain and apply toward the expense of operating the shelter all adoption fees, citizens' donations toward shelter operations, service fees received, and other revenues, which both the society and the City may agree shall be retained by the Society." As a result, it is recommended that Section 7-82, Disposition of Funds be deleted.

In accordance with the Agreement and Lease signed in March, 2001, the City pays the Lynchburg Humane Society \$76,000 annually. The City also funds the water, sewer, electric and telephone utility bills as well as monthly pest control services which are approximately \$18,000 - \$20,000 a year.

PRIOR ACTION(S): Agreement and Lease between the City and the Lynchburg Humane Society, March 28, 2001

BUDGET IMPACT: Not applicable

CONTACT(S):

Bonnie Svrcek, Deputy City Manager 847.1443 ext. 224
Julie Passmore, President, Lynchburg Humane Society, 522.7565

ATTACHMENT(S): An ordinance amending Article III, Chapter 7 of the *City Code*
Agreement and Lease between the City and the Lynchburg Humane Society

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 7-79 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTION RELATING TO THE FEES CHARGED FOR THE IMPOUNDMENT OF ANIMALS AT THE LYNCHBURG ANIMAL SHELTER AND TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG BY REPEALING SECTIONS 7-81 AND 7-82, THE REPEALED SECTIONS RELATING TO THE REDEMPTION OF DOGS BY SOMEONE OTHER THAN THE OWNER AND THE DISPOSITION OF THE FEES COLLECTED FOR THE IMPOUNDMENT OF ANIMALS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Section 7-79 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

Sec. 7-79. Fees.

The following fees shall be charged for the impoundment of any animal under the provisions of this article:

- | | |
|---|----------------------------------|
| (a) For the first day of impoundment, or fraction thereof | \$ 15.00 <u>17.50</u> |
| (b) For each succeeding day of impoundment, or fraction thereof | 5.00 <u>7.50</u> |

The above fees shall be in addition to any fine or other penalty for the violation of this chapter.

2. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted by repealing Sections 7-81 and 7-82.

~~Sec. 7-81. Redemption by person other than owner.~~

~~A custodian of a dog or individual who has found a dog may qualify as owner and may claim the dog by expressing his desire in writing to claim the dog at the expiration of the five (5) day period set out herein, after payment of the required license fee. Provided, however, in the event the rightful owner shall claim such dog at any time, the custodian or finder shall relinquish possession of such dog to the rightful owner.~~

~~Sec. 7-82. Disposition of funds.~~

~~All moneys received and collected under the provisions of this article shall be deposited in the general fund of the city.~~

3. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, made this 28th day of March, 2001 by and between the CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia, Lessor ("City"); and LYNCHBURG HUMANE SOCIETY, INC., a nonprofit corporation of the Commonwealth of Virginia, Lessee ("Society").

W I T N E S S E T H :

WHEREAS, the City is the owner of a facility located in the City of Lynchburg on premises more particularly described below, which was constructed for the purpose of and is being used for the purpose of impounding and harboring seized, stray, homeless, abandoned or unwanted animals; and,

WHEREAS, the City is required by law to cause to be maintained a pound for the keeping of certain animals; and,

WHEREAS, the Society's primary objective is the prevention of cruelty and the promoting of humane care and treatment for animals; and,

WHEREAS, the Society assisted, cooperated and consulted with the City relative to the planning, design and construction of the aforesaid facility; and,

WHEREAS, the Society is currently leasing said facility and operating it pursuant to a Lease and Agreement with the City dated April 23, 1981; and,

WHEREAS, the best interests of the City and the public will be served by continuing to lease to the Society said facility in which to operate an animal shelter; and,

WHEREAS, the City can most economically provide a pound for the impounding and harboring of certain animals as required by Virginia law by paying the Society to operate such a facility; and,

WHEREAS, the City and the Society desire to enter into a new agreement to establish the new terms and conditions of the leasing of said facility to the Society and the operation of an animal shelter by the Society;

NOW, THEREFORE, THIS AGREEMENT FURTHER WITNESSETH:

That, for and in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

1. LEASED PREMISES – The area located within the perimeter fence, at the corner of Naval Reserve Street and Stadium Road, in the City of Lynchburg, Virginia, including any and all buildings and improvements located within said area, and the small parking lot provided for that facility in front of the building (“Premises”).

2. TERM OF AGREEMENT– The term of this Agreement shall be for a period beginning on the 28th day of March 2001, and ending on the 30th day of June 2001. Thereafter, the same shall be renewed automatically from year to year unless either party to this Agreement shall, at least ninety (90) days prior to the termination of this Agreement, give to the other party notice in writing of its intention to terminate the Agreement. The Society shall pay to the City rental for the lease of said Premises in the sum of One Dollar (\$1.00) annually, in advance, with said rent being due on the signing of this Agreement and for each year thereafter on the anniversary date of this Agreement.

3. OWNERSHIP OF THE PREMISES AND PROPERTY LOCATED THEREON – The ownership of all of the real property on the Premises, i.e., land, building(s), improvements, and affixed equipment, will remain in the City, and the City will maintain the basic structure as originally completed with its plumbing, electrical and mechanical systems.

All of the furnishings, removable fixtures, appliances and movable equipment shall be provided by the Society, shall remain the property of the Society, and shall be maintained by the Society. The Society will mark all of its furnishings, removable fixtures, appliances and movable equipment and will maintain a master inventory list, including control number and itemized description, and will supply the City with a copy thereof which shall be retained on file along with an executed copy of this Agreement.

The City shall not be liable for damage to or loss of any of the Society's property or equipment or the property and equipment of any of its officers, agents, employees or volunteers, which is brought onto the Premises, regardless of how such damage or loss may occur, including, but not limited to, any losses or damages caused by electrical or equipment failure, theft, fire or by any other reason whatsoever. It is expressly agreed that the Society, its officers, agents, employees, and volunteers, in placing property or equipment on the Premises do so at their own risk.

No changes or additions to the basic structure as originally completed shall be made by the Society without the prior written approval of the City. Any such changes as the City may approve will be paid for and maintained by the Society and will become the property of the City.

4. INCINERATOR- At some time prior to the date of this Agreement, there was an incinerator on the Premises, which was the property of the City. That incinerator ceased to function and has been removed from the Premises. A used incinerator has been donated to the Society and has been placed on the Premises. The Society is in the process of obtaining any and all necessary permits required to operate this incinerator. The Society will not operate the incinerator until it has obtained any and all necessary permits that are required to legally operate the incinerator. Whenever the Society operates the incinerator it shall ensure that any and all

applicable Federal, State and Local laws, ordinances, rules and regulations are complied with.

The Society shall be responsible for the maintenance of the incinerator.

In the interest of energy conservation, the Society will limit the incineration of euthanized animals to no more often than twice a week. However, in the event the Society reaches its maximum capacity to store euthanized animals, the Society may incinerate euthanized animals more frequently. The City hereby reserves the right to use the incinerator, whenever, in its opinion, such use shall become necessary on an emergency basis.

Provided the City has any and all necessary permits required to use the incinerator to burn contraband, the City's Police Department shall have the right to use the incinerator to dispose of contraband at times when the incinerator is not being used by the Society. The City's Police Department and the Society will work together to arrange mutually agreeable times for the City's Police Department to use the incinerator.

Upon termination of this Agreement, the incinerator will become the property of the City.

5. COMPLIANCE WITH LAW - In its use of the Premises and operation of the animal shelter, the Society shall abide by any and all applicable Federal, State and local laws, ordinances, rules and regulations now in force or hereinafter adopted ("Laws").

6. SOCIETY AS ANIMAL SHELTER OPERATOR AND STANDARDS OF OPERATION – The Society agrees to maintain a lawful pound for the City in accordance with §3.1-796.96 of the Code of Virginia (1950), as amended ("State Code"), as a means to meet the City's obligation to provide such a facility. In so doing, the Society may employ volunteers, compensated employees or both, at its discretion and expense. Receiving, showing, feeding, water, and other care for animals at the shelter, as well as provisions for adoption and euthanasia of such animals, shall be done in accordance with Society's policies; provided that such policies

shall at all times be consistent with any and all applicable Laws, including, but not limited to, the guidelines issued by the Department of Agriculture and Consumer Services. The Society shall be responsible for keeping adequate records as required by any and all applicable Laws. These records shall be open for inspection by authorized representatives of the City.

The Society shall accept dogs and other animals which are required to be confined in accordance with any and all applicable Laws or as determined by the City to be necessary to protect the public health, safety and welfare, including, but not limited to, dogs running at large without the tag required by §3.1-796.92 of the State Code and other animals picked up and delivered to the shelter by the City's Animal Control Officers, the City's Animal Warden, and the City's Police Officers. In addition, the Society may, in its discretion, accept for shelter such other animals as it may elect to accept.

Any animal that is required or permitted to be confined at the shelter shall be so confined for a period of time not less than that required by Laws. The Society may, in its discretion, retain an animal for a longer period, provided such additional confinement is not a derogation of the rights of the rightful owner of such animal.

The Society will make reasonable effort to maintain the shelter as a neat, clean, secure and orderly facility. Special efforts will be made to retard odors both within and around the shelter, and, through the effective management of the animals and sheltered areas, the Society will attempt to minimize the fights, barking, and spread of communicable disease among the animals and associated problems.

The Society, as the animal shelter operator, shall have the right to make all decisions as to the general operation and utilization of the animal shelter, and the shelter shall be operated by the Society in conformity with the requirements of any and all applicable Laws.

7. SOCIETY AS INDEPENDENT CONTRACTOR - The Society shall perform its duties and responsibilities under this Agreement as an independent contractor and not as an agent or servant of the City. None of the officers, agents, employees, or volunteers of the Society shall be deemed to be officers, agents, employees or volunteers of the City for any purpose. The Society's officers shall exercise control and supervision over its agents, employees and volunteers in the performance of their work.

8. COSTS OF OPERATION – The City will fund through its budget the basic shelter utilities, such as water, sewer, gas and electricity. The Society will pay for telephone service and equipment.

The City will pay to the Society for its services the sum of \$21,686.25 for the initial term of this Agreement. This sum will be paid in one installment due on or before the 7th of April. Thereafter, the City will pay to the Society for its services \$76,000.00 annually. This sum will be paid in four equal installments due on or before the 7th day of July, October, January, and April.

Additionally, as part of the City's disposal of surplus personal property owned by the City, the City, prior to making the property available to the general public at auction, will make reasonable efforts to donate surplus office equipment to the Society for the exclusive use by the Society in the operation of the shelter. The City shall be under no obligation to make these items available to the Society. All items must be specifically approved by the Procurement Administrator for the City prior to transfer to the Society.

The City will provide pest control on the Premises on a monthly basis.

The Society will retain and apply toward the expense of operating the shelter all adoption fees, citizens' donations toward shelter operations, service fees received, and other revenues

which both the Society and the City may agree shall be retained by the Society. The Society will keep accurate records of income and expense, and said records will be subject to audit by the City at any reasonable time.

Consistent with past practices, it is understood by both parties to this Agreement that a substantial portion of the funds of the Society will be raised or donated from private rather than public sources.

For the purpose of planning and budgeting, by December 31 of each year, the Society shall provide a statistical report of the services provided to the City for the prior year. This information shall be provided along with the Society's budget needs for the upcoming year. Subject to the approval of City Council, this Agreement may be amended to increase the compensation due the Society from the City. Any such amendment shall be in writing and shall be signed by a duly authorized representative of the City and the Society.

9. RECLAMATION AND ADOPTION – The Society will make reasonable effort to determine the ownership of stray animals and to encourage owners to claim their animals. To facilitate the reclamation and adoption of animals, the Society will open the animal shelter to the public for a minimum of 30 hours each week on a Monday-through-Saturday basis, on a schedule to be determined by the Society, subject to the approval by the City. The City shall not unreasonably withhold its approval. In all reclamation and adoption activities, the Society will abide by municipal licensing and health vaccination requirements, and encourage neutering and spaying of pets. All reclamation fees shall be retained by the Society to be applied toward the cost of operating the shelter.

10. LENGTH OF STAY AND EUTHANASIA – Any animal that is required or permitted to be confined at the animal shelter shall be confined for a period not less than that required by any and all applicable Laws.

Euthanasia shall be performed in accordance with methods approved or prescribed by the State Veterinarian and bodies of dead animals shall be disposed of in accordance with the applicable guidelines, including Department of Agriculture and Consumer Services.

11. VETERINARIAN – The City agrees to retain the part-time services of a licensed veterinarian, who will provide treatment for such animals transported to the animal shelter by the City's Animal Warden, Animal Control Officers and Police Officers as may be in critical need of emergency treatment due to life threatening injury or life threatening illness.

In addition to the sum referred to in Section 8 of this Agreement, the City agrees to pay the Society \$3000 per year, so that the Society can obtain veterinary treatment for animals in need of emergency treatment due to life threatening injury or life threatening illness that are not transported by the City's Animal Warden, City Animal Control Officers and City's Police Officers. For the initial term of the Agreement in addition to the sum referred to in Section 8 of this Agreement, the City agrees to pay the Society \$1000, so that the Society can obtain this veterinary treatment. The Society has requested this funding, because the Society believes it can obtain these services more economically than the City can. Ninety days prior to the end of each term of this Agreement, the Society can request the City obtain these services. If the Society so requests, the City will utilize its procurement process to obtain these services in an amount not to exceed \$3000, and upon procurement of these services by the City, the Society shall no longer be entitled to the \$3000 payment referred to in this section.

For the treatment of animals not transported to the animal shelter by the City's Animal Warden, City Animal Control Officers and City's Police Officers, the Society will continue its efforts to obtain the donation of veterinary services and supplies from any and all available sources included, but not limited to, local veterinarians.

The determination as to the nature and the manner of treatment for such animals shall remain within the purview of the said veterinarian.

12. INDEMNITY - The Society shall indemnify, defend, and hold harmless the City, its officers, agents, and employees from any claims, damages, and/or actions of any kind or nature, whether at law or in equity, arising from or caused by the Society's negligence or intentional acts in the performance or nonperformance of its obligations under this Agreement or Society use of the Premises.

13. INSURANCE – The City will maintain adequate Fire Insurance on the basic structure on the Premises and upon the affixed equipment.

The Society shall obtain and maintain during the life of this Agreement the following insurance policies and coverages:

- a. Comprehensive General Liability – Comprehensive General Liability shall insure against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of the Society's performance under this Agreement. The minimum liability for this coverage shall be one million dollars (\$1,000,000.00) combined single limit for any once occurrence.
- b. Fire Legal Liability – Fire Legal Liability Coverage shall be maintained to cover the cost of rebuilding or repairing the structure in the event of loss due to the Society's negligent or intentional acts. The minimum liability for this coverage shall be \$400,000.
- c. Workers' Compensation – Workers' Compensation insurance covering the Society's statutory obligations under the laws of the Commonwealth of Virginia and Employer's Liability insurance shall

be maintained for all the Society's employees engaged in work under this Agreement. With respect to Worker's Compensation coverage, the Society's insurance company shall waive rights of subrogation against the City, its officers, employees, agents, volunteers, and representatives.

All insurance the Society is required to obtain and maintain shall meet the following requirements:

- a. Either before or at the same time that it executes this Agreement, the Society shall furnish the City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles. Additionally, on the anniversary of the date of this Agreement, without demand by the City, and at such other times as the City may request, the Society will furnish the Risk Manager for the City with such certificate or certificates of insurance.
- b. The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been received by the Risk Management Officer for the City of Lynchburg."
- c. The required certificate or certificates of insurance shall name the City of Lynchburg, its officers, employees, agents, volunteers and representatives as additional insureds.
- d. Where waiver of subrogation is required with respect to any policy of insurance required under this Section, such waiver shall be specified on the certificate of insurance.
- e. Insurance coverage shall be in a form and with an insurance company approved by the City which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Agreement shall be authorized to do business in the Commonwealth of Virginia.

One hundred and eighty days prior to the end of each term of this Agreement, the City shall have the right to require increases in the amounts of insurance specified above. Any adjustments shall bear a responsible relation to any change in the cost of living or cost of repair

or replacement, as measured by changes in the Consumer Price Index of the United States Bureau of Labor Statistics applicable to the Commonwealth of Virginia or comparable measure if the Consumer Price Index is no longer being issued.

14. MAINTENANCE AND CARE OF PREMISES – The Society will assume the responsibility for all minor repairs, such as, but not limited to, the replacement of light bulbs and broken windows, and damage to woodwork and walls, and the City will be responsible for making necessary structural repairs not occasioned by the Society's negligence, such as, but not limited to, maintaining the roof in good repair, repairing any bursted pipes, and failure of the heating and plumbing systems. Subject to the above, upon termination of this Agreement, the Premises shall be returned to the City clean and in good repair, ordinary wear and tear expected. The City will use reasonable efforts to install an operational ventilation system on the Premises on or before, June 30, 2001.

15. APPOINTEES TO RESOLVE UNCLEAR MATTERS – In order to promote the mutually compatible objectives of the Society and the City as they pertain to the proper care of sheltered animals, the Lynchburg Police Chief will designate an Animal Control Officer for the City of Lynchburg and advise the Society in writing of his designee. Similarly, the Society designates its Shelter Manager as the Lynchburg Humane Society representative who will serve as its sole designee in resolving with the Animal Control Officer any unclear matters regarding the operation of the animal shelter, impoundment procedures, veterinarians' services, occasionally extended retention of impounded animals, etc.

The Deputy City Manager is hereby designated as the City's representative for administration of this Agreement. The Board President is hereby designated as the Society representative for administration of this Agreement.

16. NONDISCRIMINATION - In the performance of this Agreement, the Society shall not discriminate against any contractor, subcontractor, employee, applicant for employment, or invitee because of race, color, religion, sex, national origin, age, disability, or any other basis prohibited by state law, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Society. The Society agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Society, in all solicitations or advertisement for employees placed by or on behalf of the Society, will state that the Society is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section. The Society will include the provisions in this section in every subcontract or purchase order over \$10,000.00, so that the provisions will be binding on such subcontractor or vendors.

17. DRUG-FREE WORKPLACE - During the performance of this Agreement, the Society agrees to (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Society's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Society that the Society maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done pursuant to this Agreement by the Society in which employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

18. NONAPPROPRIATION - All funds for payments by the City under this Agreement are subject to the availability of appropriation for this purpose by the Council for the City of Lynchburg. In the event of nonappropriation of funds by the Council for the City of Lynchburg for the services provided under this Agreement, the City will terminate the Agreement without termination charges or other liability of the City, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Agreement is spent, whichever event shall occur first. If funds are not appropriated at any time for continuance of this Agreement, cancellation will be accepted by the Society on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this Agreement beyond the date of termination.

19. NOTICES - Any notices required by this Agreement shall be sent by first class United States mail, return receipt requested or hand-delivered. Such notice shall be addressed as follow:

IF TO THE CITY BY U.S. MAIL:
Deputy City Manager
City of Lynchburg
P.O. Box 60
Lynchburg, Virginia 24505

IF HAND-DELIVERED TO THE CITY:
Deputy City Manager
City of Lynchburg
City Manager's Office, City Hall
901 Church Street
Lynchburg, Virginia

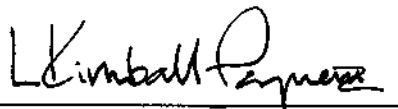
IF TO THE SOCIETY BY EITHER U.S. MAIL OR HAND-DELIVERY:

President
Lynchburg Humane Society, Inc.
3305 Naval Reserve Road
Lynchburg, Virginia 24501

This Agreement is executed in duplicate.


IN TESTIMONY WHEREOF, the City of Lynchburg has caused this agreement to be signed in its name by KIMBALL PAYNE, its City Manager, with its seal affixed and attested by PATRICIA KOST, its Clerk of Council, and Lynchburg Humane Society, Inc., has caused this instrument to be signed in its name by Julia Passmore, its President, all pursuant to due authority, as of the day and year first above written.

CITY OF LYNCHBURG


By: 
Kimball Payne
City Manager

SEAL

ATTEST:


Patricia W. Kost,
Clerk of Council

LYNCHBURG HUMANE SOCIETY, INC.

By: 
Julia Passmore
President

SEAL